21

Office-Supreme Court, U. S.
FEB 28 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 497.

SEATRAIN LINES, INC.,

Petitioner,

v.

PENNSYLVANIA RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, BALTIMORE AND OHIO RAILROAD COMPANY, SEABOARD AIR LINE RAILROAD COMPANY, ERIE RAILROAD COMPANY, and ASSOCIATION OF AMERICAN RAILROADS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MEMORANDUM ON BEHALF OF RESPONDENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton St., Newark 5, N. J., U. S. A.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 497.

SEATRAIN LINES, INC.,

Petitioner,

v.

PENNSYLVANIA RAILROAD COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, BALTIMORE AND OHIO RAILROAD COMPANY, SEABOARD AIR LINE RAILROAD COMPANY, ERIE RAILROAD COMPANY, and ASSOCIATION OF AMERICAN RAILROADS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MEMORANDUM ON BEHALF OF RESPONDENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Petitioner, Seatrain Lines, Inc., brought suit in December of 1951 in the United States District Court for the District of New Jersey under the antitrust laws against four railroads, including the Louisville & Nashville Railroad Company (described as "primary defendants") for damages and for injunctive relief and against others for damages only.

On February 16, 1952, Louisville & Nashville Railroad Company entered its appearance specially and moved to dismiss the complaint and to quash the alleged service of a summons upon it on the grounds that the District Court had no jurisdiction over its person and that the venue of the action was improperly laid in New Jersey (Original Doc. No. 48). Thereafter, the other defendants, by motion, challenged the District Court's jurisdiction over the subject matter of the suit on the grounds that the Interstate Commerce Commission was the proper tribunal to which Seatrain Lines, Inc. should apply for the relief claimed (R. 441-442).

Argument on Louisville & Nashville Railroad Company's motion was held in abeyance by the District Court on the stated grounds that if the motions of the other defendants were granted, the Court would be required to dismiss as to the Louisville & Nashville Railroad Company as well, thus obviating the necessity for a hearing on the separate issues of venue and personal jurisdiction (R. 602).

The other defendants were successful on their motion addressed to jurisdiction over the subject matter, and the District Court dismissed the complaint as to them by order dated November 12, 1952 (R. 623). Although Louisville & Nashville Railroad Company had made no motion on the ground of lack of primary jurisdiction, had filed no briefs, and had made no arguments thereon, the District Court dismissed the complaint as to that company on the Court's own motion pursuant to Rule 12(h) of the Rules of Practice for the District Courts of the United States (R. 625). This order of dismissal was entered on November 21, 1952. Petitioner, Seatrain Lines, Inc., appealed to the Circuit Court of Appeals for the Third Circuit from both orders of dismissal and now petitions this Court under 28 U. S. C.

1254 for a writ of certiorari to that Court. Since Louisville & Nashville Railroad Company is brought before this Court as a result of that petition, it conceives it is obliged to make a statement of its position.

This Respondent contended from the outset that the District Court had no jurisdiction over its person and that venue was improperly laid. Those questions were raised by timely motion returnable prior to the motions of the other defendants. It conceived then, and it contends now, that it is not obliged to contest with Seatrain Lines, Inc. the question of primary jurisdiction or the merits of the case until the issue of personal jurisdiction and venue are first determined. Accordingly, Louisville & Nashville Railroad Company filed no briefs nor did it participate in any way in the argument relating to the primary jurisdiction issues. Although this Respondent agrees entirely and fully with the position taken by the other respondents who now oppose this application for a writ of certiorari, as argued and expressed in their joint brief filed herein, and accepts as correct the conclusions and orders of the District Court Judge, it likewise believes that it is not appropriate for it now, on this petition, to submit briefs or argument to this Court on those issues.

Conclusion.

It is respectfully submitted that a denial of the petition of Seatrain Lines, Inc. for a writ of certiorari, if adjudged with respect to the other defendants, should properly carry with it a denial of the petition with respect to Louisville & Nashville Railroad Company as well.

Robert Carey,
H. T. Lively,
Attorneys for Louisville & Nashville
Railroad Company.